

NEBRASKA DEPARTMENT
OF INSURANCE

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

JAN 26 2004

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
KENNETH KAHN

) CAUSE NO.: A-1528
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) RECOMMENDED ORDER
) AND ORDER

This matter came on for hearing on the 22nd day of January, 2004, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. This matter arises out of a denial of an application for a resident insurance producer license. The Nebraska Department of Insurance ("Department") was represented by its legal counsel, Martin Swanson. Kenneth Kahn ("Applicant") was not present and was not represented by legal counsel. Applicant offered no evidence in support of his application. The Department offered oral testimony and exhibits. Beverly Creager, the Licensing Administrator of the Department, testified on behalf of the Department. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. The matter was taken under advisement. As a result of the hearing, the hearing officer hereby makes the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. The Department is the duly designated agency charged with regulating the business of insurance and with exercising jurisdiction and control over the licensing of

insurance producers in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-101.01 and 44-4047 et seq.*

2. On or about November 4, 2003, Applicant applied for a resident insurance producer's license to sell property and casualty, life insurance and annuities, sickness, accident and health insurance, health maintenance organization and credit insurance. (Ex. 1). On said application, Applicant responded "Yes" to Part III B and disclosed that he had previous disciplinary action, including but not limited to refusal, suspension, revocation, taken by a regulatory agency in any state . . . against him or any business which he had been directly connected. (Ex. 1).

3. On or about November 5, 2003, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, notified Applicant that his application for an insurance producer's license was denied based upon *Neb. Rev. Stat. §44-4059(1)(a), (b), (f), (h), and (i)* and pursuant to §44-4059(2) she informed Applicant of his option to make a written request for a hearing on the denial. (Ex. 1).

4. On or about December 9, 2003, Applicant requested a hearing, pursuant to *Neb. Rev. Stat. §44-4059(2)*, to appeal the denial of the license. Said request was received by the Department on December 16, 2003. (Ex. 15). The Department granted the Applicant's request for a hearing even though his request was made after the thirty-day request period set forth in *Neb. Rev. Stat. §44-4059 (2)*.

5. The Notice of Hearing filed December 23, 2003 was served upon the Applicant by certified mail, return receipt requested, to the address of 4018 Frederick Street, Omaha, Nebraska 68105. (Ex. 11). To date, the Department has not received proof of receipt. The hearing was scheduled for January 14, 2004 at 10:00 a.m. On that

date, Applicant telephoned Beverly Creager and requested a continuance to attend the hearing when it was convenient for him to do so. The Department did not receive written notice of Applicant's request for a continuance or an explanation of Applicant's reason for the request. The hearing officer continued the hearing until January 22, 2004 at 10:00 a.m. (Ex. 13). The Department served Applicant with notice of the hearing by certified mail, return receipt requested and by U.S. Mail, postage prepaid. Applicant received the certified letter on January 16, 2004 as evidenced by Exhibit 14 and did not appear for the hearing.

6. Applicant previously held an insurance agent's license in June 1993. (Ex. 2). At some point thereafter, Applicant's insurance agent license expired and he reapplied for reinstatement of the license August 14, 2000. (Ex. 6). The Department denied Applicant's request for a license on August 29, 2000 after learning of Applicant's removal as trustee for misappropriation of trust funds. (Ex. 7). Applicant attempted to withdraw his application from review by letter of August 29, 2000 faxed to the Department (Ex. 6), however, when Applicant received the Department's denial letter, he requested a hearing. (Ex. 8).

7. A hearing was held on November 20, 2000 and, as a result of that hearing, a Findings of Fact, Conclusions of Law, Recommended Order and Order was issued on November 21, 2000, (Ex. 9), affirming the denial by the Department's Licensing Administrator. Evidence was submitted at the hearing to support that Applicant was ordered by the County Court of Douglas County, Probate No. PR-00-495, to pay restitution to the Guinter Kahn Irrevocable Intervivos Trust in the amount of \$31,266.67

plus accrued interest for monies Applicant had misappropriated from the trust assets while trustee. (Ex. 3, 4, 5).

8. The Department did not present evidence at the January 22, 2003 hearing to support the references in the Department's denial letter to *Neb. Rev. Stat. §44-4059 (1)(a)*(providing incorrect, misleading, incomplete, or materially untrue information in the license application, (1)(b) (violating any insurance law or violating any rule, regulation, subpoena, or order of the Director or of another state's insurance commissioner or director), (1)(f) (having been convicted of a felony or Class I, II or III misdemeanor) so those items are not considered. However, the hearing officer finds that Applicant has had an insurance producer license, or its equivalent denied, suspended, placed on probation, or revoked in Nebraska, *Neb. Rev. Stat. §44-4059 (1)(i)*, and that Applicant's actions with regard to his service as trustee to the Guinter Kahn Irrevocable Intervivos Trust demonstrate Applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, *Neb. Rev. Stat. §44-4059 (1)(h)*.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Applicant to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-101.01* and *§44-4047 et seq.*
2. The Department has personal jurisdiction over Applicant.
3. The previous denial of Applicant's license in Cause No.: A-1415 and Applicant's actions as trustee of the Guinter Kahn Irrevocable Intervivos Trust constitute

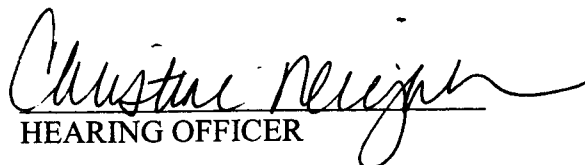
a sufficient basis to deny Applicant a license pursuant to *Neb. Rev. Stat.* §44-4059(1)(i) and §44-4059 (1)(h).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Director of Insurance deny Applicant's request for an insurance producer's license.

Dated this 26th day of January, 2004

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

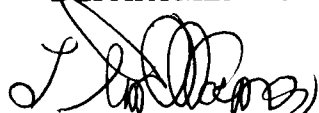

HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department for Cause No.: A-1528, In the Matter of the Denial of Application for License for Kenneth Kahn.

Dated this 26th day of January, 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon Applicant by mailing same to his

address of 4018 Frederick Street, Omaha, NE 68105 on this 21st day of January, 2004
by certified mail, return receipt requested and by U.S. Mail, postage prepaid.

